

Before the
Federal Communications Commission
Washington, DC 20554

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In the Matter of)
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Federal State Joint Board on)
Universal Service)
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Forward-Looking Mechanism)
For High Cost Support)
)

CC Docket No. 96-45

CC Docket No. 97-160

FILING OF THE
TENNESSEE REGULATORY AUTHORITY
ON COST STUDIES
FOR DETERMINING THE FORWARD-LOOKING COST
OF PROVIDING THE SERVICES
SUPPORTED BY FEDERAL UNIVERSAL SERVICE SUPPORT

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May 22, 1998

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The Tennessee Regulatory Authority (TRA) respectfully submits the following comments in response to the FCC's Report and Order of May 7, 1998 (Order 97-157 at ¶248), and its subsequent First and Second Extension Orders. These Orders require the states that elected by August 15, 1997 to file cost studies, to file such studies by May 26, 1998. Although the TRA elected to file a cost study, its *Universal Service Generic Contested Case* proceeding (Docket No. 97-00888) remains open, as described below, with the decision on a cost model pending. Consequently, the TRA is not filing a cost study. Nevertheless, the TRA's *Interim Order on Phase I of Universal Service* (attached and summarized below) decides certain cost modeling issues which may be of use to the FCC in developing its cost model for the federal universal service support mechanism.

The TRA opened its Universal Service docket on its own motion at the regularly scheduled Authority Conference on May 13, 1997. Pre-Hearing Conferences were held on July 28 and September 23, 1997. Technical workshops were held on August 5 and October 14, 1997. The TRA elected to file a cost study with the FCC at its August 5, 1997, Authority Conference. At its regularly scheduled Authority Conference on October 21, 1997, the TRA split the Universal Service proceeding into two Phases. Phase I concerned preliminary and non-specific cost issues, while Phase II was to address cost methodology and modeling. On February 17, 1998, a Phase III on rate re-balancing issues was added.

The Phase I hearing was held the week of December 8, 1998, including testimony by 14 witnesses. The TRA deliberated on the Phase I issues at the February 3, 1998, Authority Conference. A subsequent pre-hearing conference on Phase II was also held February 3, 1998, followed by a technical workshop on the cost models on March 8, 1998. The TRA held five days of hearings on Phase II between April 15 and April 22, 1998, taking the testimony of 25 witnesses. Phase II post-hearing briefs are due May 22, 1998, and proposed Findings of Fact and Conclusions of Law are due May 29, 1998. The date on which the Directors will deliberate on the Phase II issues, including the cost models, and the date for a hearing in Phase III have not been determined.

On May 20, 1998, the TRA issued its *Interim Order on Phase I of Universal Service* (Order), including its findings on Preliminary Cost Modeling Issues. The cost model is a common platform from which area- and/or company-specific data may be assessed. Thus, the TRA finds that the cost model should be generic, reflecting the

forward-looking, least cost technology of an efficient firm operating in the relevant geographic area. Further, costs should be developed on a combined basis, without regard to jurisdictional separations. Wherever possible, the cost factors and inputs should be area-specific with respect to geographic, topographic, and demographic characteristics, although not necessarily reflective of company-specific operating practices. The territorial scope and deaveraging capabilities of the cost model should be consistent with the area for which costs are examined. (Order at 40-41)

The TRA also finds that the cost model should include the costs of all of the services in the revenue benchmark (Order at 41).^{1/} Thus, at a minimum, these costs include the entire costs of the loop and port, and reasonable allocations of the costs of switching, tandem switching, transport, and software associated with the services in the revenue benchmark. Since various pricing strategies have been employed to support universal service in the past, and since these strategies may vary by geographic area, both the costs and revenues of all the relevant services must be captured. As with the revenue benchmark, failure of the cost model to include all of the relevant costs may lead to a failure to identify all high cost areas. If some costs are missing, then the revenue benchmark may appear to exceed universal service costs in some areas when, were all the relevant costs captured, the costs would exceed the revenue benchmark.

^{1/} The TRA finds that the revenue benchmark should include the revenues for the following services: basic local service, toll, directory assistance, all vertical features, touch-tone, zone charges, long distance access (both interstate and intrastate), the interstate Subscriber Line Charge, and white page services; plus the subsidy from Yellow Pages advertising (Order at 36-37).

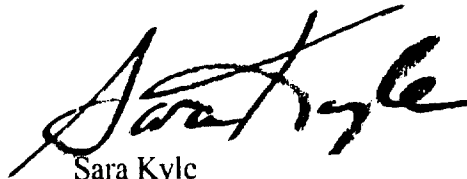
To identify high cost areas, it is essential to examine the costs and the revenues from virtually all services.^{2/} Any area for which these costs exceed the associated revenue benchmark is a higher cost area than one in which the revenue benchmark exceeds the costs. If costs are not separated, then the cost of the loop, for example, is not allocated to individual services. This necessitates the inclusion of all service revenues which support the loop in the revenue benchmark. Furthermore, failure to include all the revenues that support the components of universal service costs in the benchmark may incorrectly identify some areas as high cost, when these areas merely depend disproportionately on the excluded services revenues for local service support.

^{2/} The TRA, however, finds that intrastate universal service support will be provided only on primary residential lines, and not on business lines, pursuant to state law. Tenn. Code Ann. § 65-5-207 defines Universal Service as, "residential basic local exchange service." Therefore, the TRA finds that "...The following 'core' services shall be supported by the intrastate universal service fund: the primary access line consisting of dial tone, touch-tone and usage provided to the premises of a residential customer for the provision of two-way switched voice or data transmission over voice grade facilities, Lifeline, Link-Up Tennessee, access to 911 Emergency Services and educational discounts existing on June 6, 1995;" (Order at 53; discussion at 10-13).

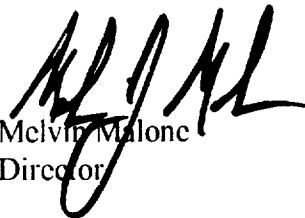
Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Lynn Greer".

Lynn Greer
Chairman

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Sara Kyle
Director

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Melvin Malone
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May 22, 1998

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

May 20, 1998

**IN RE: UNIVERSAL SERVICE
PROCEEDING**

)
)

DOCKET NO. 97-00888

INTERIM ORDER ON PHASE I OF UNIVERSAL SERVICE

**H. Lynn Greer, Jr.
Chairman**

**Sara Kyle
Director**

**Melvin J. Malone
Director**

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Exhibit A	Order Designating Eligible Telecommunications Carriers Pursuant to 47 U.S.C. § 214(e), the Telecommunications Act of 1996 Section 254 (C) and FCC Order 97-157.	
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Exhibit C	Order Establishing Procedures for Lifeline Consents Pursuant to Section 214(e) of the Telecommunications Act of 1996 and FCC Order 97-157.	
Exhibit D	Order Establishing Procedures for Self-Certification of Rural Telephone Companies Pursuant to Section 153(37) of the Communications Act, as Amended, and FCC Order 97-157.	

INTERIM ORDER ON PHASE I OF UNIVERSAL SERVICE

This matter came before the Tennessee Regulatory Authority (the "Authority") at the regularly scheduled Directors' Conference on February 3, 1998, to make findings of facts and conclusions of law on the issues in Phase I of this docket. The Universal Service docket was convened to establish an intrastate universal service funding mechanism pursuant to Tenn. Code Ann. § 65-5-207 (Universal Service), 47 U.S.C. § 214(e)(2) of the *Communications Act of 1934, as amended*, the federal *Telecommunications Act of 1996* (the "*Telecom Act*"), and *Federal Communications Commission (FCC) Order 97-157, 12 FCC Rcd 8776 to 9616 (1997)*. Phase I establishes the guidelines and defines the parameters for the other two phases of this docket. Phase II will identify the appropriate cost methodology and calculate the required intrastate support needed while Phase III will consider any necessary rate rebalancing. This is not a final Order, but shall be incorporated into any final Order as if fully rewritten therein.

I. BACKGROUND

In 1995, the Tennessee Legislature enacted the *Tennessee Telecommunications Competition Act* (the "*Tennessee Act*"), Section 1 of which became Tenn. Code Ann. § 65-4-123, and Section 18 of the *Act* became Tenn. Code Ann. § 65-5-207. Following the enactment of the *Tennessee Act*, the United States Congress passed the *Telecom Act* on February 8, 1996.¹ Both the *Tennessee Act* and the *Telecom Act* address the preservation of universal telephone service at affordable rates. The *Telecom Act* addresses universal service in § 254 by establishing a funding mechanism "to ensure access to telecommunications services for low-income, rural, insular and high cost areas at a price comparable to those in lower cost areas for similar

¹ The Telecommunications Act of 1996, Public Law 104-104, 104th Congress, February 8, 1996. 47 U.S.C. § 251 et. seq.

services.”² The Tennessee Legislature addresses the preservation of universal service in Tenn. Code Ann. § 65-5-207(a) stating that “Universal service, consisting of residential basic local exchange telephone service at affordable rates and carrier-of-last-resort obligations must be maintained after the local telecommunications markets are opened to competition. In order to ensure the availability of affordable residential basic local exchange telephone service, the authority shall formulate policies, promulgate rules and issue orders which require all telecommunications service providers to contribute to the support of universal service.”

Responsibility for implementing the interstate portion of Universal Service in the *Telecom Act* was delegated to the FCC by the United States Congress while responsibility for implementing the intrastate portion of Universal Service in the *Telecom Act* was delegated to the Authority in Tenn. Code Ann. § 65-5-207(a). On May 8, 1997, the FCC issued its *Report and Order, FCC Order No. 97-157*, which established “a plan that satisfies all of the statutory requirements, and puts into place a universal service support system that will be sustainable in an increasingly competitive marketplace.”³

On October 21, 1997, after reviewing the comments received in response to the Hearing Officer's Notice of Proposed Schedule and Request for Comments and the legal and policy issues presented by the participants, the TRA approved separating the Universal Service proceeding into two (2) phases. On February 17, 1998, the Authority approved the addition of a third phase to this docket to address rate rebalancing. The issues to be addressed in Phase I were approved and adopted at a specially scheduled Directors' Conference held on October 30, 1997. Fifteen (15) issues, including subparts, were approved.

² FCC Order 97-157, 12 FCC Rcd 8780 (1997), ¶ 1.

³ FCC Order 97-157, *supra* note 2 (1997), ¶ 2.

The following Orders previously issued by the TRA are of significance in this proceeding: *Order Designating Eligible Telecommunications Carriers Pursuant to 47 U.S.C. § 214(e), the Telecommunications Act of 1996 Section 254 (C) and FCC Order 97-157*, attached hereto as Exhibit A; *Order Establishing Intrastate Discounts For Schools and Libraries Pursuant To Section 254(h) of the Telecommunications Act of 1996 and FCC Order 97-157*, attached hereto as Exhibit B; *Order Establishing Procedures for Lifeline Consents Pursuant to Section 214 (e) of the Telecommunications Act of 1996 and FCC Order 97-157*, attached hereto as Exhibit C; and *Order Establishing Procedures for Self-Certification of Rural Telephone Companies Pursuant to Section 153(37) of the Communications Act, As Amended, and FCC Order 97-157*, attached hereto as Exhibit D.

II. PARTIES TO THE PROCEEDING

At the second Pre-Hearing Conference held September 23, 1997, the Hearing Officer admitted the following entities as Parties with full rights of participation: AT&T Communications of the South Central States, Inc., BellSouth Cellular Corp., BellSouth Telecommunications, Inc., Ben Lomand Rural Telephone Cooperative, Citizens Local Exchange Carriers, Coalition of Small LECs and Cooperatives, Office of the Attorney General Consumer Advocate Division, DeKalb Telephone Cooperative, Inc., Electric Power Board of Chattanooga, GTE Mobilnet, MCI Telecommunications Corp., NEXTLINK Tennessee LLC, North Central Telephone Cooperative, Time Warner Communications of the Mid-South, Twin Lakes Telephone Co., United Telephone-Southeast and Sprint Communications L.P., West Kentucky Rural Telephone Cooperative Corp., Yorkville Telephone Cooperative, the Tennessee Municipal Telecommunications Group, and TCG MidSouth, Inc.

The following entities filed requests for permission to monitor the proceeding: Deltacom, Inc., Phoenix Network, Inc., Standard Communications Co., 360° Communications Company, WorldCom, Inc., AVR L.P. d/b/a Hyperion of TN L.P., LCI International Telecom Corp., TN Department of Finance and Administration, TN Department of Education and Charlene Taylor (Chaz Taylor, Inc.).

III. EXECUTIVE SUMMARY

This Order contains the TRA's findings in Phase I of the Universal Service funding proceeding which addresses the non-cost issues. Phase I specifically determines how Tennessee's intrastate USF should be structured for non-rural carriers. A digest of the TRA's findings is presented in this section. These findings are discussed by issue with specificity in Section IV of this Order.

The Authority first defines the parameters for determining the appropriate size of the intrastate USF, realizing that the size of the fund could have a significant impact upon competition. A fund that requires large contributions from telecommunications providers could discourage new entrants from doing business in Tennessee and encourage such companies to devote their resources to other states where Universal Service contributions are less. To the contrary, a fund that is too small could result in high cost areas not receiving the support needed to maintain "affordable" telephone services.

The Authority also concludes that the Tennessee intrastate USF will provide support to carriers serving customers in high cost areas, to carriers serving low income customers, and to carriers providing discounted educational lines to schools and libraries. Additionally, the Tennessee Relay Center and public interest payphones may eventually receive support from the Tennessee USF. The FCC's USF will provide similar support to cover the interstate needs of

customers in high cost areas, low income customers, and educational lines to schools and libraries. The TRA's findings in Phase I of this proceeding are summarized below with more specificity following this section:

Support will not be based on the income level of the subscriber.

To promote competition and customer options, the Authority finds that support should be provided to residential subscribers in high cost areas regardless of the subscriber's income level. The Authority elects not to build affordability standards into the revenue benchmark as long as the benchmark is based on current rates.

Services to be made available by a carrier to receive intrastate USF support.

In order to receive intrastate Universal Service support, carriers must be designated by the Authority as an Eligible Telecommunications Carrier (ETCs). Each ETC will have certified service areas approved by the Authority. To receive this intrastate ETC designation, carriers will be required to make the following services available to all residential subscribers in the ETC's certified service areas: access line consisting of dial tone, touch-tone, and local calling area usage, toll blocking, access to E-911 services, access to directory assistance, access to interexchange carriers and access to operator services. Intrastate ETCs will also be required to offer Lifeline, Link-up and educational discounts consistent with Tenn. Code Ann. § 65-5-208(a)(1).

Intrastate ETCs are also required to advertise the availability of service and charges for service throughout their service areas. This is consistent with the provisions adopted by the FCC for the interstate USF.

Facilities requirements for intrastate ETCs.

The Authority finds that the facilities requirements for intrastate ETCs should be consistent with the FCC's facilities requirements. The FCC's requirements are compatible with the Authority's goal of providing Universal Service support to the carrier providing the facilities and not to a reseller of the service. Specifically, the Authority finds that, if an ETC provides supported services by reselling a service purchased at the wholesale discount, as determined in Docket 96-01331, *Avoidable Costs of Providing Bundled Services For Resale By Local Exchange Companies* (hereafter the "Avoidable Cost Docket"), such ETC will not be eligible for intrastate Universal Service support on that particular service. This approach ensures that the carrier incurring the cost of facilities will receive the support.

Intrastate support for primary residential lines.

The Authority finds that intrastate support will be provided only on primary residential lines and not on business or additional residential lines. Including only residential lines, and not business lines, is consistent with Tenn. Code Ann. § 65-5-207 that defines Universal Service as "residential basic local exchange telephone service."

Service areas are to be designated by wire center.

The Authority finds that service areas should be designated by wire center. Although the TRA recognizes that smaller support areas, such as CBGs, would better target universal support, it also generally recognizes that use of a CBG designation has inherent infirmities, such as identifying customers and costs, which would make this option difficult to implement and costly to administer. It is also clear that the *Communications Act, as amended*, 47 U.S.C. § 214, requires ETCs to offer the services supported by the USF "throughout the service area for which the designation is received." For purposes of this proceeding, implicit subsidy exists

when, for a specific wire center, the forward-looking costs of providing the services included in the revenue benchmark exceed the revenues generated by the benchmark services.

Services to be included in the revenue benchmark.

The Authority finds that when competitors decide to provide service to residential customers in high cost areas, such competitors will offer a number of services to the customer (e.g., local service, long distance, vertical features, etc.). For this reason, the revenue benchmark used in calculating support for each wire center should be the average revenue per residential line for that wire center. Specifically, the revenues in the benchmark should include the following services: local service, intraLATA toll, directory assistance, all vertical features, touch-tone, zone charges, interstate and intrastate access charges, the interstate subscriber line charge, and white page services. The revenue benchmark should be calculated using the most current units and rates available at the time the benchmark study is prepared.

In addition, the subsidy currently being provided by Yellow Page advertising is to be included in the revenue benchmark. Since the divestiture of AT&T in 1984, both regulators and the courts have recognized the importance of Yellow Pages in keeping local rates affordable and maintaining universal service. The Authority finds that it is important at this time to continue recognizing the Yellow Page subsidy. The Authority also concludes that including Yellow Pages in the benchmark and thus maintaining a smaller fund, at least in the initial phases, best promotes market entry and a competitive market. Once competitors are firmly established in the state and begin to express an interest in serving high cost areas, the TRA may consider removing Yellow Pages from the benchmark.

The cost studies for each wire center should reflect the forward-looking costs of providing all of the services included in the revenue benchmark. This provides the proper

matching of revenues and costs. If costs exceed the benchmark for the wire center, the difference, less any Federal support, will be funded through the intrastate USF. Costs should be calculated at the wire center level using a generic cost model including both company-specific inputs and generic inputs as determined in Phase II of this docket.

Methodologies and assumptions in calculating the cost of UNEs and Universal Service should be consistent.

Some competitors may provide Universal Service through the purchase of unbundled network elements (UNEs). In order to make Universal Service support potentially compensatory to such competitors, the Authority finds that the cost studies underlying the UNE rates and Universal Service support must be consistent. In order to compare the price of UNEs to Universal Service, it is necessary to have consistency in cost methodologies, (e.g., study areas and assumptions). The TRA also recognizes, however, that there are distinct issues to be addressed which may result in differences between the two studies on methodology, such as, but not limited to, inclusion of retail cost in Universal Service, but not in UNEs.

All providers should be required to contribute to the intrastate fund.

The Authority finds that, consistent with the *Telecom Act*, all providers of telecommunications services, regulated or not, will be required to contribute to the intrastate fund with the following two exceptions: 1) A temporary exemption from contribution will be provided for rural carriers and cooperatives as long as these carriers or cooperatives are not serving non-rural customers or have entered into an interconnection agreement to serve non-rural customers; and 2) a *de minimis* exemption will apply if a carrier's contribution to the intrastate USF is less than \$1,000. It is initially believed that, in such instances, administrative cost of collection will outweigh the amounts collected.

The Authority also finds that intrastate telecommunications carriers should be defined consistent with Section 3(a)(49) of the *Communications Act, as amended*.

Support for schools and libraries and rural health care providers.

For the four services currently discounted to schools and libraries, the Authority finds that existing state discounts will be maintained and the federal pre-discount price will be no greater than the state discounted rate. The Authority also finds that current federal universal support is adequate for rural health care providers, and if it can later be demonstrated that the effectiveness of the federal plan is lacking, the TRA may revisit this issue.

IV. SPECIFIC FINDINGS OF FACT AND CONCLUSIONS OF LAW

Testimony on the Phase I issues was presented by the Parties during a hearing (the "Hearing") held on December 8 and 9, 1997. Having heard the Parties' testimony, having reviewed pertinent portions of the record, and having fully considered the positions of the Parties, the TRA considered these matters at its February 3, 1998, Directors' Conference and unanimously made the following specific findings of fact and conclusions of law on the Phase I issues:

ISSUE 1: Services to be Supported by a Tennessee Universal Service Support System.

In considering the services to be supported by the intrastate USF, testimony was presented during the Hearing on services included in the FCC's definition of Universal Service as contained in the *Telecom Act*, and on State statutes relevant to Universal Service. The following issues were considered:

- 1a. Does the TRA use state or Federal defined services?**
- 1b. Should the intrastate USF provide support in addition to Federal mandated services?**
- 1c. What are the Universal Service core elements?**
- 1d. Does Tennessee Relay Center need to be addressed in this proceeding?**
- 1e. Do public interest payphones, if determined to be necessary, need to be addressed in this proceeding?**

Positions of the Parties

Many of the parties comment that Federally defined services⁴ should be used with the addition of Lifeline, Linkup, and educational discounts which were in place at the time Tenn.

⁴ Services in the Federal universal service definition include: single party service, voice grade access to the public switched network, DTMF signaling, access to 911, access to operator services, access to interexchange service, access to directory assistance, and toll control or toll blocking for qualifying low income consumers. FCC Order 97-157 ¶ 22.

Code Ann. § 65-5-208(a)(1) became effective. AT&T Communications of the South Central States, Inc. ("AT&T") argues that Lifeline and Linkup were not services as such, but were pricing mechanisms that should be continued. BellSouth Telecommunications, Inc. ("BST") and Sprint suggests that non-primary residential lines should be supported or identified as non-basic local service and exempt from regulation and subject to price changes. BST also argues that single line businesses should be supported if their cost is not covered by the current rate. AT&T, Citizens Local Exchange Carriers ("Citizens"), and NEXTLINK, Tennessee, LLC ("NEXTLINK") argues against support for non-primary residential lines and business lines on the basis that Tenn. Code Ann. § 65-5-207 clearly omitted business lines and that Tenn. Code Ann. § 65-5-208(a)(1) describes "an access line" in singular. The Coalition of Small LECs and Cooperatives (the "Coalition") argues that the network, not the individual residential or business access lines, should be supported since the network was not built to serve only a particular class of customer. The Consumer Advocate Division (the "CAD") comments that educational discounts in place at the time Tenn. Code Ann. § 65-5-208 was enacted are not basic residential services and do not meet the definition of Universal Service. Moreover, the CAD maintains that the Tennessee Relay Center ("TRC") should be included in this proceeding since it was a basic service at the time Tenn. Code Ann. § 65-5-208 was enacted. No other party supported the CAD's argument that the TRC should be addressed as part of this proceeding. State statutes are clear regarding what services should be supported by the intrastate USF. Tenn. Code Ann. § 65-5-207(a) states that: "Universal Service, consisting of residential basic local exchange telephone service at affordable rates and carrier-of-last resort obligations must be maintained after the local telecommunications markets are opened to competition."

Tenn. Code Ann. § 65-5-208(a)(1) goes on to define "basic local exchange telephone service" as: "telecommunications services which are comprised of an access line, dial tone,

touch-tone and usage provided to the premises of a residential customer for the provision of two-way switched voice or data transmission over voice grade facilities, Lifeline, Link-Up Tennessee, 911 Emergency Services and educational discounts existing on June 6, 1995."

Consistent with these statutes, the Authority orders the following "core" services to be supported by the intrastate universal service fund: the primary access line consisting of dial tone, touch-tone and usage provided to the premises of a residential customer for the provision of two-way switched voice or data transmission over voice grade facilities, Lifeline, Link-Up Tennessee, access to 911 Emergency Services and educational discounts existing on June 6, 1995.

Support for business lines are excluded from the definition since those lines are excluded from the statutory definition in Tenn. Code Ann. § 65-5-207(a) for USF purposes only.⁵ Also, intrastate support will only be provided on residential customers' primary (first) line and not additional lines. In establishing criteria for determining support, Congress stated in the Telecom Act that the FCC should consider the extent to which telecommunications service "have through the operation of market choices by customers, been subscribed to by a substantial majority of residential customers."⁶ The Authority concludes that this is also an appropriate criteria for intrastate universal service. At this time, the majority of residential customers have only one phone line.⁷ Therefore, the Authority finds that support should only be provided on the primary residential line at this time. The exclusion of the additional residential lines from the definition of Universal Service does not suggest that all residential lines are anything other than basic service and subject to existing law applicable thereto.

⁵ Tenn. Code Ann. § 65-5-207(a) states in pertinent part "universal service consisting of residential basic local exchange service at affordable rates."

⁶ 47 U.S.C. § 254(c)(6)

⁷ According to access line reports for February, 1998 submitted by BellSouth, only 11% of BellSouth's total residential access lines are additional lines.

The Authority also finds that Lifeline and Link-up services shall be funded through a separate, specific fund within the intrastate USF. This issue is discussed in further detail in Issue 10. The Authority further finds that neither the Tennessee Relay Center (TRC), nor public interest payphones should be addressed in this proceeding. Such issues are more appropriately addressed in separate proceedings where current and future needs, the criteria for determining such needs, and the cost of public interest payphones can be determined. Also, the costs of and the funding mechanism for the TRC can be examined in the same proceeding. If either the TRC or public interest payphones require support funding, such funding should be administered in conjunction with the USF.

ISSUES 2 & 3: Eligible Telecommunications Carriers.

In considering the criteria that a telecommunications carrier must meet to become eligible to receive intrastate Universal Service support, the Authority considered the required services to be offered, advertising requirements and facilities requirements for receiving intrastate support. Specifically, the following issues were considered:

- 2a. How should the TRA address "exceptional circumstances"?**
- 3a. What procedures will the TRA use for designating intrastate ETCs?**
- 3b. Should those companies not under the TRA's authority be designated as an ETC?**
- 3c. Should the TRA adopt the Federal advertising guidelines?**
- 3d. Should the TRA adopt the Federal facilities requirements?**
- 3e. Must a carrier participate in this proceeding to be eligible for designation as an ETC?**
- 3f. What procedure is necessary to ensure that rural carriers satisfy notice of status requirements?**

Positions of the Parties

AT&T questions whether carriers who cannot provide one of the core services should be denied Universal Service support. AT&T recommends that such carriers be given the opportunity to request an exception and that such exception requests be handled on a case by case basis. The Coalition states that its members will not be able to provide toll limitation as the FCC has defined it and, in limited situations, they may not be able to provide E-911 or single party service. The Coalition suggests that the TRA should use the FCC provisions to define "exceptional circumstances."

The Parties agree that the FCC's eligibility requirements should be used for intrastate ETCs, but that exceptions should be allowed for a limited time for the inability of a carrier to provide single party service, E-911, and toll limitations. The Parties also agree that exceptions should be addressed on a case by case basis using the FCC's provisions. The Parties suggest that

toll limitation be defined as either toll blocking or toll control. In its post Hearing brief, however, BST indicated that the FCC clarified in its December 30, 1997 Order on Reconsideration stating that the FCC no longer requires that an ETC offer both toll limitation and toll blocking. The FCC now allows ETCs to offer either toll blocking or toll limitation to satisfy ETC requirements. There was no cross-examination of this particular issue at the Hearing.

The Parties agree that any company seeking intrastate support and is willing to comply with TRA rules should be required to file a motion or petition for ETC status and that, at a minimum, the requirements of Section 214(e) of the *Communications Act, as amended*, should be met. The Parties also agree that participation in this proceeding should not be a requirement for ETC status. All of the Parties addressing the advertising requirements recommend that the advertising guidelines contained in the *Communications Act, as amended*, Section 214(e)(1)(b) are adequate. Most of the Parties recommend that the Authority increase the Federal facility requirements to be "meaningful" facilities. United Telephone-Southeast and Sprint Communications L.P. ("Sprint/UTSE") comment that the facility requirement should be meaningful facilities. The Coalition maintains that the FCC requirements should be adopted, but that "de minimis" facilities should not be considered to meet the requirements (e.g., operator services). The Coalition further argues that allowing resold services to meet the test will allow "cream skimming".⁸ NEXTLINK argues that for resold services, the resellers, not the facilities provider, should be given the Universal Service support, while BST maintains that support should be provided to the underlying provider of the facilities. Time Warner Communications of

⁸ Cream Skimming is the process of electing to serve only the most profitable customers.

the Mid-South ("Time Warner") maintains that the carrier incurring the cost of the facilities be provided the support. AT&T advocates that the Authority adopt the Federal facility requirement and allow the use of unbundled network elements ("UNEs") to qualify as use of a carrier's own facilities.

Findings

The Authority finds that carriers must provide each of the core services designated in Issue 1 in order to be eligible to receive intrastate Universal Service support. The Authority also finds that carriers must offer toll blocking service, access to directory assistance, access to interexchange carriers, and access to operator services to be eligible for intrastate support. Since these services are required by the FCC for interstate ETC designation, it is logical to also require them for intrastate purposes.

The Authority recognizes that there may be exceptional circumstances that prevent a carrier from offering all of the core services. Upon a showing by an otherwise eligible carrier that exceptional circumstances prevent them from providing one or more qualifying services, the Authority may grant a carrier's petition for intrastate ETC status for a limited period of time. During such time period, otherwise eligible carriers that are unable to provide one or more qualifying services may still receive intrastate support while they make the upgrades necessary to offer these qualifying services. Requests for exemption will be considered on a case by case basis.